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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

STATE OF NEW JERSEY,

*Plaintiff,*

v.

ELIZABETH DARKWA,

*Defendant.*

**NOTICE OF REMOVAL**

TO: Court Administrator  
Kearny Municipal Court  
404 Kearny Avenue  
Kearny, NJ 07032

Theresa M. McGuire, Esq.  
Municipal Prosecutor, Town of Kearny  
Kearny Municipal Court  
404 Kearny Avenue  
Kearny, NJ 07032

PLEASE TAKE NOTICE that this case, previously pending in the Kearny Municipal Court (Hudson County), as summons number 0907-S-2022-000157, is now removed to the United States District Court for the District of New Jersey, pursuant to 28 U.S.C. §§ 1442(a) and 1455(b). Defendant, Elizabeth Darkwa, by and through her undersigned attorneys, respectfully states the following upon information and belief:

1. Elizabeth Darkwa, an employee with the title of Supervisor of Distribution Operations at the U.S. Postal Service's Distribution Center in Kearny, New Jersey, has been named as a defendant in an action pending in the Kearny

Municipal Court under complaint-summons number 0907-S-2022-000157. A copy of the complaint-summons is attached as Exhibit A.

2. Stephanie Smith, an employee with the title of Mail Handler at the U.S. Postal Service's Distribution Center in Kearny, New Jersey, filed a complaint about Ms. Darkwa, which resulted in the summons charging Ms. Darkwa with the offense of simple assault, in violation of N.J.S.A. 2C:12-A(1).

3. Ms. Smith's allegations, and the charge against Ms. Darkwa, arise out of a workplace incident that occurred on February 24, 2022, during the course of Ms. Darkwa's employment as a Supervisor of Distribution Operations for the U.S. Postal Service. In particular, Ms. Smith alleges that Ms. Darkwa hit Ms. Smith with a door after an alleged verbal argument.

4. At all times relevant to the allegations in the summons, Ms. Darkwa was a federal officer acting within the scope of her federal employment and in the performance of her federal duties.

5. Ms. Darkwa specifically and categorically denies that she committed the offense of assault.

6. By issuing this summons against Ms. Darkwa, the State of New Jersey, knowingly or unknowingly, is attempting to use its power to hold Ms. Darkwa personally responsible, in essence, for actions taken in the performance of her federal duties as Ms. Smith's supervisor. Ms. Darkwa has a colorable federal defense to raise in the action – that is, immunity from the charge under the Supremacy Clause of the United States Constitution. Ms. Darkwa is entitled to immunity from this prosecution under the Supremacy Clause because her actions were necessary and

proper in the course of this federal employment. *See In re Neagle*, 135 U.S. 1, 75 (1890); *New York v. Tanella*, 374 F.3d 141, 147 (2d Cir. 2004). Any prosecution against her is therefore removable, as she has available to her the colorable defense of federal immunity. *See Mesa v. California*, 489 U.S. 121 (1989).

7. 28 U.S.C. § 1442(a)(1) provides for the removal of this action to the United States District Court because it is a criminal prosecution against an officer of the United States for acts under color of his federal office.

8. 28 U.S.C. § 1455(b) provides for the removal of criminal prosecutions within thirty days after the defendant's arraignment in state court.

9. Ms. Darkwa's initial appearance in Kearny Municipal Court was on May 12, 2022.

10. Because Ms. Darkwa appeared in Kearny Municipal Court on May 12, 2022, this removal action is timely filed under 28 U.S.C. § 1455(b).

WHEREFORE, defendant prays that this Court will promptly examine the above statements; conduct an evidentiary hearing if the Court deems one necessary; notify the Kearny Municipal Court that it shall proceed no further in this matter; and enter such further orders as will dispose of the matter as justice shall require, all in accordance with the provisions of 28 U.S.C. §§ 1442(a)(1) and 1455.

Dated: Newark, New Jersey  
June 9, 2022

PHILIP R. SELLINGER  
United States Attorney

By: /s/ Brooks E. Doyne  
BROOKS E. DOYNE  
Assistant United States Attorney